

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Bankruptcy Act 1966

Bankruptcy (Fees and Remuneration) Determination 2010

Statutory basis

Section 316 of the *Bankruptcy Act 1966* (the Act) provides that the Minister may make legislative instruments determining the amounts of fees in relation to specified provisions of the Act.

Purpose

The *Bankruptcy (Fees and Remuneration) Determination 2010* (the Determination) repeals and replaces the *Bankruptcy (Fees and Remuneration) Determination 2008*. The new Determination effects the following changes to the fees charged by the Insolvency and Trustee Service Australia (ITSA):

- Bankruptcy notices: increase from \$400 to \$440 per notice
- Extension of bankruptcy notices: increase from \$100 to \$150 per extension
- Search of the National Personal Insolvency Index (NPII): increase from \$20 to \$35 per search
- Inspection of public documents: change from \$20 per inspection plus \$2 per page copied to \$40 per inspection
- Regulation of trustees – renewal of registration: increase from \$1200 for three years to \$1600 for three years
- Regulation of debt agreement administrators – renewal of registration: increase from \$1200 for three years to \$1600 for three years
- Official trustee fees – administration of bankrupt estates: increase from \$3000 plus 20% of amount realised to \$3200 plus 20% of amount realised
- Official Receiver notices: change from \$400 for up to 2 hours plus \$50 for each additional period of 15 minutes to a flat fee of \$450

The Determination also incorporates minor changes in line with current drafting practices.

Commencement

The Determination commences on 1 July 2010.

Consultation

The Determination has been prepared in consultation with ITSA. An outline of the proposed fee changes was provided to the Bankruptcy Reform Consultative Forum which operates as ITSA's Cost Recovery Reference Group for comment in March 2010. This ensures transparency in setting ITSA's fees and charges.

Details of the fee changes

Inspection of public documents: (Clause 2.01, Items 1–5 and 12–15)

The fee for inspection of public documents is changed from \$20 per inspection plus \$2 per page copied to \$40 per inspection.

This slight change to the basis of charging for these inspections better reflects the amount of work involved in each case.

Regulation of trustees – extension of registration (Clause 2.01, Item 7)

The fee for extension of registration as a trustee is increased from \$1200 for three years to \$1600 for three years.

This increase reflects increased costs of greater regulatory activity by ITSA which meets community expectations. The increased cost reflects work done by ITSA before renewal of registration. For example, Regulation and Enforcement check that the trustee has been active. They also review the trustee's suitability for renewal of registration. This draws on the results of annual reviews and inspection reports.

This renewal process therefore has a series of activities associated with it that aren't charged for at the time of initial registration (bearing in mind that there is also an application fee of \$2,000 to cover the costs incurred on the activities undertaken before initial registration).

The fee charged for renewal has also been held constant for 4 years.

Exercise by Official Receiver, or officer assisting the Official Receiver, of a power under the Act at the request of a trustee (Clause 2.01, Item 9)

The fee for an exercise by the Official Receiver, or an officer assisting the Official Receiver, of a power under the Act at the request of a trustee of the estate of a bankrupt is changed from \$400 for up to 2 hours plus \$50 for each additional period of 15 minutes to a flat fee of \$450.

The changed fee structure reflects ITSA's usual practice to charge no more than the minimum fee. The majority of work in relation to this fee amounts to less than one hour per request.

Regulation of debt agreement administrators – renewal of registration (Clause 2.01, Item 11)

The fee for renewal of registration as a debt agreement administrator is increased from \$1200 for three years to \$1600 for three years.

This increase mirrors the increase to the fee for extension of registration as a trustee in Clause 2.01, Item 7 above. This continues the current situation, where fees related to the registration of debt agreement administrators are identical to those charged for the registration of trustees.

Search of the National Personal Insolvency Index (NPPI) (Clause 2.02)

The fee for a search of the NPPI at an ITSA Office is increased from \$20 to \$35 per search.

This increase results from a very significant reduction in the expected volume of searches conducted following ITSA's decision to discontinue this service. The only clients expected to use the service from now on are Government agencies conducting pre-appointment checks. Other clients will conduct searches through information search agents.

Issuing bankruptcy notices (Clause 2.04)

The fee to apply for a bankruptcy notice has increased from \$400 to \$440 per notice.

This increase is solely the result of the increased costs to ITSA of providing this service. There is no significant change expected in the volume of bankruptcy notices issued each year. This fee has not increased since 2006.

Extension of bankruptcy notices (Clause 2.05)

The fee to apply for a further period within which to serve a bankruptcy notice is increased from \$100 to \$150 per extension.

This increase results from the increased costs to ITSA of providing this service as well as a reduction in the expected volume of extensions processed each year (which increases the unit cost).

Inspecting or copying composition or arrangement lodged with trustee (Clause 2.06)

The fee for inspecting or copying a composition or arrangement lodged with the Official Trustee is increased from \$20 to \$40, in line with the changes to Clause 2.01 (Items 1–5 and 12–15).

Official Trustee work in relation to bankruptcy that is annulled (Clause 3.05)

The fee for the administration of a bankrupt estate by the Official Trustee, in relation to a bankruptcy that is annulled, is increased from \$3000 plus 20% of amount realised to \$3200 plus 20% of amount realised.

This increase results from the increased costs to ITSA of providing this service over the last four years.

Official Trustee work in relation to estate of bankrupt or administration of estate of deceased person (Clause 3.09)

The fee for the administration of a bankrupt estate, or the estate of a deceased person for whose estate an order for administration has been made, by the Official Trustee is increased from \$3000 plus 20% of amount realised to \$3200 plus 20% of amount realised.

This increase is in line with the increase to Clause 3.05.